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JUN 17 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

Re: CC Docket No. 92-77
Billed Party Preference
for 0+ InterLATA Calls

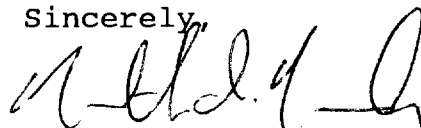
Dear Ms. Searcy:

Enclosed please find an original and four copies of the Reply Comments of The Competitive Telecommunications Association ("CompTel") which are being filed in the above-referenced matter.

Also enclosed is a duplicate copy which I would appreciate your date stamping and returning to me in the envelope provided.

Thank you for your consideration.

Sincerely,



Kenneth I. Kersch

Enclosures

cc: FCC Commissioners
Legal Advisors to FCC Commissioners

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 17 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
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Billed Party Preference)
for 0+ InterLATA Calls)
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CC Docket No. 92-77

To: The Commission

REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits its Reply Comments in response to the Commission's request for information concerning the use of "proprietary calling cards" in connection with "0+" dialing. The central issue is what policy the Commission should adopt with respect to so-called "CIID" format calling cards issued by AT&T. The debate over the proper regulatory treatment of AT&T's CIID cards has raged since last summer, and CompTel respectfully submits that the Commission must act immediately to stem the abuses associated with the distribution and use of these cards.

SUMMARY

The Commission has invited this expedited round of "0+" comments in order to consider the need to establish ground rules for the issuance of proprietary calling cards by interexchange carriers ("IXCs"). CompTel applauds the Commission's inquiry, and urges the Commission to resolve it

expeditiously by acting to ensure that all operator service providers ("OSPs") are able to bill and validate all calling cards which utilize "0+" access.

The problem addressed herein arose fairly suddenly and unexpectedly when AT&T began replacing its old "shared use" cards with new "proprietary CIID cards" late last year. Since no OSP other than AT&T has access to the information required to validate and bill calls charged to AT&T's CIID cards, their issuance abruptly and fundamentally altered the nature of the market for presubscription of interstate operator services. The fact that AT&T now blocks its approximately 30 million CIID-cardholders from making "0+" calls from approximately 25 percent of public telephones has given AT&T an insuperable advantage. Absent FCC action, AT&T will be able to use the resulting consumer outrage and call aggregator dissatisfaction to recapture the small share of the "0+" market which competitors have managed to obtain.

Fortunately, the Commission can easily and quickly take action which both preserves the competitive market and reinstitutes the ability of all "0+" cardholders to make choices between competing OSPs. The Commission need only give AT&T a choice of its own. If AT&T wishes to preserve its "0+" card, then it should be required to provide to all OSPs (for a reasonable fee) all information required to validate the cards and translate card numbers into local exchange company ("LEC") billing telephone numbers. AT&T

offers these services today to LECs and at least one IXC -- it need only extend the offering to other IXC/OSPs. Alternatively, AT&T should be required to reissue its proprietary cards in a format which would require callers to use "950" or "1-800" access codes. Both options cure the root problem -- i.e., that "0+" calls placed today by CIID cardholders are routinely routed to OSPs which cannot obtain the validation and billing information they need to provide service.

As the initial comments herein make abundantly clear, there is no doubt that the Commission has the legal authority to issue the orders requested. AT&T's proprietary "0+" CIID cards are causing severe disruption and confusion to the public and reversing the trend toward growing competition in interstate operator assisted long distance calling. Just as the validation information of LECs has been found subject to Commission jurisdiction, such information belonging to AT&T also is under FCC authority when utilized in a way that disrupts interstate telecommunications policy. Nothing could be more central to the FCC's jurisdiction.

AT&T's defense of its proprietary "0+" card program is without merit. AT&T's tired claim to an unrestricted property right in its calling card base is reminiscent of the objections it raised to resale rules two decades ago. Just as aggregators cannot block access to selected OSPs because they "own" the payphone, AT&T cannot cause harm to the proper

working of public telecommunications policy because it "owns" the database. The entire underpinning of public utility law is that private property rights must sometimes be tempered to protect the broader public interest.

AT&T's assertion that its proprietary card protects cardholders from using other OSPs by accident is equally baseless in light of newly implemented TOCSIA and FCC rules requiring call branding, location posting, rate quotes on request and access code unblocking. The fact is that AT&T has cagily undone the new TOCSIA and Commission requirements by denying cardholders the ability to make the choices which the new rules were designed to protect.

Due largely to AT&T's CIID card program, the financial condition of many OSPs is perilous. Unless the Commission acts immediately to correct this abuse of market power, many of AT&T's most innovative and energetic OSP competitors soon will be forced out of the operator services market. Not only will competition in the current presubscription market be destroyed, but AT&T's most likely potential competitors in a prospective billed party preference regime will not survive to reposition their business for that day.

I. AT&T IS USING ITS MARKET POWER IN OPERATOR SERVICES TO DESTROY COMPETITION.

Although the Commission has tentatively proposed in this docket to implement a system of billed party preference at

some undetermined future time, the operator services market today -- and for the foreseeable future -- is defined by a system of premise owner presubscription. Premise owners choose a preferred OSP, and thereafter "0+" calls placed by the premise owner and his guests are routed to the presubscribed OSP for operator processing and call completion. The record herein is replete with evidence that AT&T's roll-out of a proprietary CIID calling card has grossly distorted this market. Importantly, the record further demonstrates convincingly that AT&T has been able to gain this advantage only because it retains substantial and unique market power in operator services.

The initial comments submitted herein, and the record compiled previously in CC Docket No. 91-115, contain voluminous evidence of the problems AT&T's CIID cards have engendered. Directly or indirectly, all of these problems stem from the fact that AT&T CIID cardholders routinely dial "0+" and access OSPs other than AT&T, but the serving OSP is unable to handle the customer's request for service because AT&T alone possesses the information necessary to validate and bill calls charged to CIID cards. While there is no point in reiterating all of this evidence, it is worthwhile highlighting the principal problem areas identified by the comments:

- Routing large numbers of "0+" calls to OSPs that cannot handle them causes such carriers

to incur substantial costs which they are unable to recoup;

- "0+" callers whose calling cards are refused become irate with the serving OSP and complain to call aggregators, causing such aggregators to cancel service and return to AT&T;
- Since AT&T alone is able to pay commissions to call aggregators for the large proportion of "0+" call attempts made with CIID cards, AT&T has gained an insuperable advantage over all of its OSP competitors in bidding for new business from call aggregators; and
- Because OSPs are unable to accept the CIID cards of otherwise willing callers, OSPs have experienced precipitous revenue declines which threaten the viability both of the afflicted OSPs and their COCOT subscribers.

Even commenters who disagree with the proposal made by CompTel and others that "0+" access be placed in the "public domain" agree that AT&T's proprietary cards have severely distorted the market for operator services presubscription.¹ And there is nearly universal agreement that AT&T has craftily manipulated its market power in operator services to achieve this result. Sprint, for example, explains that AT&T has two mutually reinforcing advantages today: "AT&T's dominant share of presubscribed public phones" and its "inheritance of the former Bell System calling card base." Sprint further points out that AT&T's advantages "stem not from any particular business acumen on its part, but are rather the product of its inheritance of the entire Bell

¹ See e.g., Sprint Comments p. 3.

System base of calling card customers at divestiture, and the fact that it began with a 100 percent market share of public phones as a result of its former monopoly position."²

The record also is clear that the problems inherent to any AT&T proprietary card program were made much worse by a false and misleading AT&T CIID card marketing campaign. AT&T willfully misrepresented that both preexisting AT&T cards and LEC-issued cards would become inoperative on or about January 1, 1992 and should immediately be discarded. Cardholders were told that the change was necessitated by "government requirements." Neither representation was true, but they were repeated countless times in fulfillment materials, in response to calls to AT&T customer service and in customer meetings called by AT&T sales representatives.

There is substantial evidence that these misrepresentations succeeded in causing a large number of shared-number and LEC cardholders to discard their old cards,³ thereby artificially increasing the number of proprietary AT&T cards being carried by callers as their basic means of charging telephone calls. By causing cardholders to discard their universally accepted LEC cards, AT&T prevented them from abandoning the AT&T CIID card later.

² Id. p ii.

³ See ITI Comments pp. 7-12.

Incredibly, in its comments AT&T does not deny that it has indeed gleaned enormous advantages in public phone presubscription from its roll-out of proprietary CIID cards. AT&T suggests instead that its newfound advantages are indications that "the competitive market is functioning properly."⁴ CompTel rejects in the strongest possible terms that the market is "functioning properly" when AT&T exploits its market power to steal business from its competitors and orchestrates a mass marketing campaign based upon deception. One can only assume that AT&T believes a market is "functioning properly" whenever it is winning, regardless of the tactics employed or cost exacted.

The Commission should be particularly disturbed that AT&T fails to mount any defense of its beleaguered CIID card marketing campaign in its comments. During the open meeting where the Notice was adopted, Chairman Sikes himself expressed great concern with AT&T's claims.⁵ AT&T has not made the slightest effort to respond to the Chairman's concerns. One can only assume that AT&T has no valid explanation of its actions, or that its explanation is so weak that AT&T dares not show it in initial comments because it could easily be rebutted in reply comments. AT&T's choice was to ignore Chairman Sikes' worries.

⁴ AT&T comments at 7.

⁵ FCC Open Meeting, April 9, 1992, Item 2.

The net impact of all this is ominous. The comments show that AT&T's proprietary cards have had a devastating impact on both OSPs and private payphone owners.⁶ Absent swift remedial action by the Commission, all indications are that AT&T will be able to remonopolize the operator services market. As a policy matter, such remonopolization is highly undesirable whether or not the Commission ultimately adopts a system of billed party preference.

Many of the firms which will be destroyed likely would be among AT&T's most formidable competitors even in a billed party preference world. These companies have developed sophisticated calling card processing systems, efficient operator handling systems and innovative features. While billed party preference is being implemented, many of these firms can be expected to convert these abilities into attractive calling card products of their own. However, if AT&T's abusive activity is allowed to continue unabated, many of these potential competitors are likely to disappear long before billed party preference could become a reality. The Commission should not let that happen.

II. THE COMMISSION SHOULD COMPEL AT&T TO SHARE VALIDATION AND BILLING INFORMATION FOR CIID CARDS.

⁶ See, e.g., U.S. Long Distance Comments at 2; Zero Plus Dialing Comments at 5-7; See also Joint Comments on Emergency Motion for an Interim Order filed by Zero Plus Dialing, Inc., OAN, Inc. Services, and Resurgens Communications Group (February 10, 1992).

The initial round of comments in this docket greatly clarified the action which the Commission should take to preserve competition in the operator services market. While a number of good proposals have been made, only one can quickly and completely redress the ills occasioned by AT&T's proprietary cards. The Commission must order AT&T to share the information required to validate and bill CIID cards with other IXCs on equivalent terms to those under which AT&T provides such information to LECs today.

This approach was the consensus view of commenting IXCs. Indeed, despite AT&T's attempts to characterize it as an "AOS" issue, the fact is that the so-called "0+ in the public domain" concept was endorsed by most so-called "1+" or "full service" IXCs and AOS firms alike. MCI, for example, "strongly urges that the Commission adopt this proposal and mandate 0+ as being in the public domain."⁷ LDDS, too, "strongly urges the Commission to adopt a rule requiring IXCs to share with other IXCs billing and validation data for any calling card usable with 0+ access."⁸

The idea garnered support from some LECs as well. BellSouth, for example, maintains that "AT&T's provision of billing and validation services through its CIID card is subject to the full panoply of Title II regulation and

⁷ MCI Comments p. 1.

⁸ LDDS Comments p. 6. See also ATC Comments pp. 7-8.

accordingly ought to be tariffed as a general offering..."⁹
BellSouth bases its view on the fact that "AT&T enjoys significant market power in the provision of calling card services" which "[a]s a practical matter forecloses competition from other OSPs." BellSouth concludes that:

AT&T's classification as a common carrier with respect to CIID validation and screening is therefore necessitated by its exclusive possession of current validation data, obtained through AT&T's activities as a dominant interexchange carrier and not subject to replication by OSP competitors.¹⁰

Similarly, Pacific Bell and Nevada Bell (the "Pacific Companies") "propose that those IXCs that wish to offer 0+ dialing with their calling cards open up access to their validation to other IXCs" subject to Title II requirements. "If they wish to offer a proprietary card and withhold access to validation data," say the Pacific Companies, "then they should instruct their consumers to use access code dialing."¹¹

CompTel agrees that AT&T should be given the option of migrating its proprietary card base to the use of access code dialing. However, as suggested by ATC, this option should be made available only if AT&T is willing to require use of

⁹ BellSouth Comments pp. 1-2.

¹⁰ Id. p. 3.

¹¹ Pacific Companies Comments pp. 1-2.

"950" or "1-800" access.¹² AT&T claims that it cannot discern calls dialed on a "0+" basis from those dialed with the "10288" access code, and, therefore is unable to block calls dialed on a "0+" basis while processing "10288" dialed calls.¹³ Assuming this is true, the simple use of "10288" access is a grossly inadequate remedy since "0+" dialed calls would continue to be processed by AT&T. It is not enough that AT&T simply instruct cardholders to use 10288 access if they remain widely able to dial "0+" calls as well. Since AT&T's customers already are accustomed to using "0+" dialing, and since without blocking "0+" dialing would continue to work at most locations, any instructions by AT&T to use 10288 would have little effect. Until AT&T equips itself to distinguish "0+" calls from 10288 calls, it must be required to accept only 950 or 1-800 access code calls or open its validation database to all OSPs.

Two other alternative proposals are worthy of comment. APCC suggests that, unless AT&T agrees to share validation and billing information with IXC's, it should be barred from providing such information to the LECs.¹⁴ While the notion is attractive, CompTel believes that it does not adequately

¹² ATC Comments pp. 6-7. If the Commission affords AT&T this alternative, it should be accompanied by a requirement that it be implemented within 90 days.

¹³ AT&T Comments p. 1.

¹⁴ APCC Comments at p. 18.

address the central problem associated with proprietary cards -- i.e., that millions of CIID card calls are routed to presubscribed OSPs which must bear the cost of calls they cannot complete. Sprint suggests that AT&T be prohibited from paying commissions on CIID card calls.¹⁵ This idea, too, has some appeal, but CompTel believes that AT&T could easily avoid such a requirement by simply increasing commissions on other calls. Moreover, Sprint's proposal would not quell the consumer dissatisfaction which results when OSPs cannot accept their CIID cards. Thus, CompTel remains convinced that universal billing and validation of "0+" cards remains the only viable solution.

III. UNIVERSAL VALIDATION AND BILLING OF 0+ CARDS IS BOTH PRACTICAL AND LEGAL.

Importantly, the initial comments filed herein also clarify that it would be relatively simple for AT&T to provide validation and billing information for CIID cards to other OSPs. CompTel strongly endorses the detailed proposed made by Zero Plus Dialing, Inc. ("ZPDI").¹⁶ ZPDI's plan is

¹⁵ Sprint Comments p. 15.

¹⁶ ZPDI Comments pp. 10-12. ZPDI proposes that AT&T should have the choice of either making validation and billing available to other IXC's whose networks are reached as a result of AT&T's instructions to dial "0+" to use the card or retaining the card's "proprietary" nature by taking certain steps to assure that, contrary to AT&T's earlier instructions, cardholders must dial a "proprietary" access code to assure that AT&T's network be reached.

workable for both AT&T and OSPs, is relatively inexpensive and would effectively protect truly proprietary customer information. The feasibility of such a plan cannot be doubted since variations of it already are in use. As noted in the comments, AT&T already provides such information to hundreds of LECs pursuant to the Mutual Honoring Agreements ("MHAs") and, significantly, to at least one IXC/OSP (i.e. GTE Airfone).¹⁷

There can be little doubt that the Commission has jurisdiction to require AT&T to supply validation and billing information to other OSPs if it chooses to continue using "0+" calling cards. The jurisdictional basis for acting is grounded in the fact that proprietary "0+" calling cards are causing confusion and disruption in the placing of millions of interstate operator assisted calls, and in the fact that this turmoil is substantially undermining competition in the market for presubscription of interstate operator assisted long distance calling. Nothing is more central to the FCC's jurisdiction than interstate telephone calling procedures. CompTel agrees with BellSouth's view that all "0+" calling

¹⁷ ZPDI Comments fn. 10; ATC Comments p. 3. CompTel notes that AT&T's provision of such services to GTE Airfone while denying it to other OSPs raises serious questions of unreasonable discrimination in violation of Title II. CompTel also agrees with APCC that AT&T's exclusive provision of such information to the LECs is an unreasonable discrimination. APCC Comments p. 18.

cards are within the purview of Title II.¹⁸ Moreover, consistent with prior FCC decisions regarding the interexchange industry, validation and billing name and address information are certainly "incidental" to communications functions within FCC authority. At a minimum, there can be no doubt that Title I jurisdiction applies to AT&T's CIID cards.

AT&T's assertion that "billing functions . . . are not subject to regulation under Titles I or II" is inapposite.¹⁹ The relief sought by CompTel and others would not require AT&T to bill calls for other OSPs. Under the ZPDI proposal endorsed by CompTel,²⁰ AT&T would be directed to supply only information required to validate calls and to translate CIID card numbers into LEC billing telephone numbers ("BTN"). Actual billing services would be provided by either the LECs or through direct billing by third party billing agents. This approach is fully consistent with recent Commission decisions affirming that validation services are subject to

¹⁸ BellSouth Comments fn. 4.

¹⁹ AT&T Comments p. 4.

²⁰ See ZPDI Comments pp. 10-12. ZPDI states that validation can be accomplished with "minimal effort" because CIID card validation already is accessible through the SS7 network that OSPs use currently to validate calling cards contained in the LEC LIDBS. CIID card calls can be billed by the LECs if AT&T provides information to third party service bureaus sufficient to translate CIID numbers into LEC BTNs. AT&T would be entitled to charge reasonable fees for these limited services.

Title II and its tentative conclusion that BNA services also are Title II services. Moreover, even under Title I the Commission possess the authority to order AT&T to take these limited actions.

AT&T's claim that the Commission already has found that its calling card services are not subject to regulation plainly is incorrect.²¹ In its Joint Use Card Order,²² the Commission found only that many AT&T cards do not qualify as "LEC joint use cards," and therefore the LECs have no obligation to provide billing services for those cards. But, importantly, the Commission found that certain AT&T CIID cards -- those which are "converted RAO" cards -- do qualify as "LEC joint use cards" and are subject to regulation under Title II.²³

Moreover, the Commission left to this proceeding the issue of whether AT&T can and should be required to share validation and billing information for its proprietary "0+" cards pursuant to either Title I or Title II.²⁴ The

²¹ AT&T Comments p. 4, fn. *.

²² Policies and Rules Concerning Local Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for Supplemental Comments, CC Docket No. 91-115, FCC 92-168 (released May 8, 1992) ¶¶ 83-86.

²³ Id. fn. 180.

²⁴ As Commissioner Duggan explained in his dissenting statement in CC Docket No 92-95, ". . . we have not yet
(continued...)

Commission was concerned whether there was sufficient notice in CC Docket 91-115 to support an order directed at AT&T rather than the LECs, and that perceived defect has been cured by the Notice issued in this docket.²⁵ Having argued strenuously in Docket 91-115 that the Commission could not rule there on the question of whether "IXC joint use cards" should be regulated, AT&T cannot now be allowed to argue that the question was decided in the prior proceeding.

Finally, CompTel emphasizes that the relief sought herein would allow AT&T the option not to share any validation and billing information with other OSPs. If AT&T requires its proprietary calling cardholders to utilize a "950" or "1-800" carrier access code to place their calls, AT&T would have no obligation to cooperate with its competitors. CompTel's proposed requirement would be triggered only when "0+" access is used to distort the competitive market for interstate operator services. Even if the Commission decides that such "0+" card services are not subject to Title II, there can be no question that such calling cards are "incidental" to the provision of interstate operator services and are subject to discretionary regulation

²⁴(...continued)
determined that the operator services market is competitive. In fact, we recently issued a Notice looking into the effect of AT&T's use of proprietary cards on the competitiveness of that market."

²⁵ See AT&T Reply Comments (September 16, 1991).

under Title I. Certainly calling card validation and billing -- which directly affect interstate long distance calling -- are as much within the FCC's legal authority as the provision of "enhanced" non-common carrier data processing functions.

IV. UNIVERSAL VALIDATION AND BILLING OF "0+" CARDS WILL REDUCE CONSUMER CONFUSION AND CALL BLOCKING.

Perhaps the most compelling reason for precluding the use of proprietary "0+" cards by AT&T is that consumers will benefit immediately and directly. The record is clear that consumers who are accustomed to using "0+" dialing are frustrated and confused by the fact that their calling cards are often usable. Indeed, AT&T has made this consumer despair a central part of its marketing efforts. The beauty of universal validation and billing of "0+" cards is that it remedies this consumer dissatisfaction at the same time that it places competitors on an equal footing in the operator services market.

As APCC observes, if "0+" cards can be accepted by all presubscribed OSPs, "then consumer convenience will be greatly enhanced."²⁶ Similarly, BellSouth explains:

The real beneficiary... is the consuming public. If validation and screening data are universally available to OSPs, end users can enjoy the convenience of 0+ dialing while using the billing mechanism of their choice.²⁷

²⁶ APCC Comments p. 19.

²⁷ BellSouth Comments p. 4.

The Pacific Companies agree, stating that the "0+ interLATA calling card mutuality concept places additional control in the hands of the consumer" and "[c]onsumers should also benefit from less confusion than exists today in trying to place calls."²⁸

AT&T's claim that its proprietary cards somehow protect unwitting consumers from mistakenly placing calls with carriers they do not wish to use is easily rebutted by BellSouth which summarizes the views of many commenters when it responds:

AT&T's argument that its proprietary card serves the public interest by protecting consumers against the unwitting use of a competitors service is not especially persuasive. Call branding and other informational requirements now imposed on operator-assisted calls (47 U.S.C. Section 226), the availability of 0- transfer service, and AT&T's own considerable effort to publicize alternative 10XXX dialing make it improbable that any customer wishing to use AT&T's operator service as well as AT&T's card will be denied that opportunity.²⁹

Again, the Pacific Companies agree, saying that most consumers "simply want to complete a call at a reasonable price," and, "[i]f consumers are particularly price or feature sensitive, they can choose to utilize access codes."³⁰

²⁸ Pacific Companies Comments p. 5.

²⁹ BellSouth Comments pp. 4-5.

³⁰ Pacific Companies Comments p. 6.

The overarching fact is that both Congress and the Commission have gone to great lengths to create a system where consumers will not have calls blocked and will be given all the information required to make a reasoned choice of OSPs. But AT&T has undone these admirable efforts by denying its CIID cardholders the ability to make a choice. Not long ago AT&T severely criticized aggregators and OSPs who blocked access to the AT&T access code. It persuaded the Congress and the Commission to order aggregators to spend billions of dollars to unblock these codes. In an incredible -- some may say deceitful -- turnabout, AT&T now is "blocking" CIID cardholders from making "0+" calls through any carrier other than AT&T.

The Commission should not countenance this clever, but intolerable effort by AT&T to undo the policy established by Congress and the Commission and implemented by private parties at great expense. The Commission must act now to restore the ability of millions of CIID cardholders to make a choice and of competitive providers of operator services to compete on fair terms with the carrier that held a monopoly in the industry scarcely five years ago.

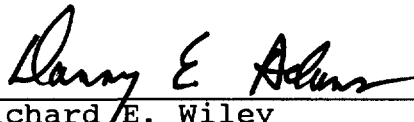
CONCLUSION

Although the issue addressed in this round of comments is discrete, the stakes are enormous. Failure by the Commission to act quickly to remedy the situation will be

tantamount to forcing many competitors out of business and sentencing the operator services market to remonopolization for the foreseeable future. CompTel respectfully urges the Commission to act immediately to require AT&T to make available validation and billing information for its "0+" CIID calling cards.

Respectfully submitted,

**COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION**

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